

Senate Energy & Telecomm. Comm.

Exhibit No. 1

Date 3/3/2011

Bill No. HB 198

# 1895 CODE

- Section 2223. Report of commissioners.*  
" 2224. *Appeal.*  
" 2225. *New proceedings to cure defective title.*  
" 2226. *Payment of damages.*  
" 2227. *To whom paid.*  
" 2228. *Final order of condemnation, what to contain; when filed, title vests.*  
" 2229. *Putting plaintiff in possession.*  
" 2230. *Payment of costs.*  
" 2231. *Rules of practice.*  
" 2232. *Private roads.*  
" 2233. *Exceptions.*

§ 2210. Eminent domain is the right of the state to take private property for public use. This right may be exercised in the manner provided in this Title.

STATUTE TO BE STRICTLY CONSTRUED.—In *Bensley v. Mountain Lake Water Co.*, 13 Cal. 306, 73 Am. Dec. 575, the court said: "All statutory modes of divesting titles are strictly construed, and to be strictly followed." *S. P. R. R. Co. v. Wilson*, 49 Id. 398. He who relies for a title upon an extraordinary mode of acquisition given him, not by the will of the owner, ex-

press or implied, but against his will and by the mandate of the law, must show for his warrant a strict compliance with those statutory rules from which his title accrues: *Stanford v. Worn*, 27 Id. 174; see *Curran v. Shattuck*, 24 Id. 427; *Stockton v. Whitmore*, 50 Id. 554; *Gilmer v. Lime Point*, 19 Id. 58.

§ 2211. Subject to the provisions of this Title, the right of eminent domain may be exercised in behalf of the following public uses:

1. All public uses authorized by the government of the United States.
2. Public buildings and grounds for the use of the state, and all other public uses authorized by the legislative assembly of the state.
3. Public buildings and grounds for the use of any county, city, or town, or school district; canals, aqueducts, flumes, ditches or pipes conducting water, heat or gas for the use of the inhabitants of any county, city or town; raising the banks of streams, removing obstructions therefrom, and widening, deepening, or straightening their channels; roads, streets and alleys, and all other public uses for the benefit of any county, city or town, or the inhabitants thereof, which may be authorized by the legislative assembly; but the mode of apportioning and collecting the costs of such improvements shall be such as may be provided in the statutes or ordinances by which the same may be authorized.
4. Wharves, docks, piers, chutes, booms, ferries, bridges, of all kinds, private roads, plank and turnpike roads, railroads, canals, ditches, flumes, aqueducts and pipes for public transportation, supplying mines and farming neighborhoods with water, and draining and reclaiming

lands, and for floating logs and lumber on streams not navigable, and sites for reservoirs necessary for collecting and storing water.

5. Roads, tunnels, ditches, flumes, pipes and dumping places for working mines; also outlets, natural or otherwise, for the flow, deposit or conduct of tailings or refuse matter from mines; also an occupancy in common by the owners or the possessors of different mines of any place for the flow, deposit or conduct of tailings or refuse matter from their several mines, and sites for reservoirs necessary for collecting and storing water.

6. Private roads leading from highways to residences or farms.

7. Telephone or electric light lines.

8. Telegraph lines.

9. Sewerage of any city, county or town, or any subdivision thereof, whether incorporated or unincorporated, or of any settlement consisting of not less than ten families, or of any public buildings belonging to the state or to any college or university.

10. Tramway lines.

11. Electric power lines. [§ 2211. Act approved February 27, 1895.]

#### EMINENT DOMAIN, GENERALLY.

—The state has a general right to condemn land to public use, and she may select her own agent to accomplish this public end: *Rogers v. Bradshaw*, 20 Johns. 735. It seems not to be important whether a corporation, through whose instrumentality the object is to be attained, be a domestic or foreign corporation: *Varrick v. Smith*, 5 Paige, 137; *R. R. Co. v. Davis*, 2 Dev. & B. 451; 2 Gibbs, 447; 2 Kent's Com. 339; *Morris C. & B. Co. v. Townsend*, 24 Barb. 665. Private property cannot be taken for a private use except as provided by the constitution, nor shall it be taken "or damaged" for public or private use without just compensation having been first made, etc.: See sec. 14, art. III., of the constitution. This is an extension of the common provision for the protection of private property: *Transportation Co. v. Chicago*, 99 U. S. 635. The meaning of this extension of the words "or damaged" is very carefully considered in *Denver v. Bayer*, 7 Colo. 113, and many cases construing the expression are there cited and commented upon. It is within the power of the legislature to authorize the straightening, etc., of the channel of a river to protect a populous and important district of the state from threatened inundation and apprehended destruction: *Green v. Swift*, 47 Cal. 539.

Under the provisions of eminent domain, lands and property have been condemned and taken for a United States fort: *Gilmer v. Lime Point*, 19 Cal. 47; and other military purposes: *Gilmer v. Lime Point*, 18 Cal. 229; for municipal purposes, such as roads or streets: *Hidden v. Davisson*, 51 Cal. 138; *Ventura County v. Thompson*, 51

Cal. 577; *Weber v. Supervisors*, 59 Cal. 265; *Trahern v. Supervisors*, 59 Cal. 320; *In re Grove Street*, 61 Cal. 438; *Los Angeles v. Waldron*, 65 Cal. 283; water works: *Mahoney v. Supervisors*, 53 Cal. 383; water works for the benefit of the University of California: *People v. Pfeiffer*, 59 Cal. 89; supplying the inhabitants of a town with water: *St. Helena Water Co. v. Forbes*, 62 Cal. 182; *Lake Pleasanton Water Co. v. Contra Costa Water Co.*, 67 Cal. 659. See *S. V. W. W. v. San Mateo W. W.*, 64 Cal. 123, holding that plaintiffs could not condemn defendant's property, such not being "necessary" for the supplying of water by plaintiffs.

**WATER DITCHES.**—As to these the statute must be strictly pursued: *Dalton v. Water Commissioners*, 49 Cal. 222; *Cummings v. Peters*, 56 Cal. 595; and see *Lorenz v. Jacobs*, 63 Cal. 73, where owners of mining claim were not allowed to condemn land to obtain water to work their claim, although they intended to supply water to others for mining and agricultural purposes.

**RAILROADS.**—Railroads concern the public interest as a matter of legal judgment: *Napa Valley R. R. Co. v. Napa Co.*, 30 Cal. 437. The mere fact that a railroad is owned and operated by a private corporation and for private profit does not prevent it from being also of "public use": *S. & V. R. R. Co. v. City of Stockton*, 41 Cal. 148; *Contra Costa R. R. Co. v. Moss*, 23 Cal. 325. Whether workshops for repairing locomotives and cars are necessary appendages to a railroad, and whether land sought to be condemned for workshops is really needed, are questions for the jury to answer: *S. P. R. R. v. Raymond*, 53 Cal. 223.

**2009 CODE**

**Part 1**  
**General and Substantive Provisions**

**70-30-101. Eminent domain defined.** Eminent domain is the right of the state to take private property for public use. This right may be exercised in the manner provided in this chapter.

History: En. Sec. 579, p. 189, L. 1877; re-en. Sec. 579, 1st Div. Rev. Stat. 1879; re-en. Sec. 597, 1st Div. Comp. Stat. 1887; amd. Sec. 2210, C. Civ. Proc. 1895; re-en. Sec. 7330, Rev. C. 1907; re-en. Sec. 9933, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1237; re-en. Sec. 9933, R.C.M. 1935; R.C.M. 1947, 93-9901.

**70-30-102. Public uses enumerated.** Subject to the provisions of this chapter, the right of eminent domain may be exercised for the following public uses:

- (1) all public uses authorized by the government of the United States;
- (2) public buildings and grounds for the use of the state and all other public uses authorized by the legislature of the state;
- (3) public buildings and grounds for the use of any county, city, town, or school district;
- (4) canals, aqueducts, flumes, ditches, or pipes conducting water, heat, or gas for the use of the inhabitants of any county, city, or town;
- (5) projects to raise the banks of streams, remove obstructions from streambanks, and widen, deepen, or straighten stream channels;
- (6) water and water supply systems as provided in Title 7, chapter 13, part 44;
- (7) roads, streets, alleys, controlled-access facilities, and other publicly owned buildings and facilities for the benefit of a county, city, or town or the inhabitants of a county, city, or town;
- (8) acquisition of road-building material as provided in 7-14-2123;
- (9) stock lanes as provided in 7-14-2621;
- (10) parking areas as provided in 7-14-4501 and 7-14-4622;
- (11) airport purposes as provided in 7-14-4801, 67-2-301, 67-7-210, and Title 67, chapters 10 and 11;
- (12) urban renewal projects as provided in Title 7, chapter 15, parts 42 and 43, except that private property may be acquired for urban renewal through eminent domain only if the property is determined to be a blighted area, as defined in 7-15-4206(2)(a), (2)(h), (2)(k), or (2)(n), and may not be acquired for urban renewal through eminent domain if the purpose of the project is to increase government tax revenue;
- (13) housing authority purposes as provided in Title 7, chapter 15, part 44;
- (14) county recreational and cultural purposes as provided in 7-16-2105;
- (15) city or town athletic fields and civic stadiums as provided in 7-16-4106;
- (16) county cemetery purposes pursuant to 7-11-1021, cemetery association purposes as provided in 35-20-104, and state veterans' cemetery purposes as provided in 10-2-604;
- (17) preservation of historical or archaeological sites as provided in 23-1-102 and 87-1-209(2);
- (18) public assistance purposes as provided in 53-2-201;
- (19) highway purposes as provided in 60-4-103 and 60-4-104;
- (20) common carrier pipelines as provided in 69-13-104;
- (21) water supply, water transportation, and water treatment systems as provided in 75-6-313;
- (22) mitigation of the release or threatened release of a hazardous or deleterious substance as provided in 75-10-720;
- (23) the acquisition of nonconforming outdoor advertising as provided in 75-15-123;
- (24) screening for or the relocation or removal of junkyards, motor vehicle graveyards, motor vehicle wrecking facilities, garbage dumps, and sanitary landfills as provided in 75-15-223;
- (25) water conservation and flood control projects as provided in 76-5-1108;
- (26) acquisition of natural areas as provided in 76-12-108;
- (27) acquisition of water rights for the natural flow of water as provided in 85-1-204;
- (28) property and water rights necessary for waterworks as provided in 85-1-209 and 85-7-1904;
- (29) conservancy district purposes as provided in 85-9-410;

(30) wharves, docks, piers, chutes, booms, ferries, bridges, private roads, plank and turnpike roads, and railroads;

(31) canals, ditches, flumes, aqueducts, and pipes for:

(a) supplying mines, mills, and smelters for the reduction of ores;

(b) supplying farming neighborhoods with water and drainage;

(c) reclaiming lands; and

(d) floating logs and lumber on streams that are not navigable;

(32) sites for reservoirs necessary for collecting and storing water. However, reservoir sites must possess a public use demonstrable to the district court as the highest and best use of the land.

(33) roads, tunnels, and dumping places for working mines, mills, or smelters for the reduction of ores;

(34) outlets, natural or otherwise, for the flow, deposit, or conduct of tailings or refuse matter from mines, mills, and smelters for the reduction of ores;

(35) an occupancy in common by the owners or the possessors of different mines of any place for the flow, deposit, or conduct of tailings or refuse matter from their several mines, mills, or smelters for reduction of ores and sites for reservoirs necessary for collecting and storing water for the mines, mills, or smelters. However, the reservoir sites must possess a public use demonstrable to the district court as the highest and best use of the land.

(36) private roads leading from highways to residences or farms;

**(37) telephone or electrical energy lines, except that local government entities as defined in 2-7-501, municipal utilities, or competitive electricity suppliers may not use this chapter to acquire existing telephone or electrical energy lines and appurtenant facilities owned by a public utility or cooperative for the purpose of transmitting or distributing electricity or providing telecommunications services;**

(38) telegraph lines;

(39) sewerage of any:

(a) county, city, or town or any subdivision of a county, city, or town, whether incorporated or unincorporated;

(b) settlement consisting of not less than 10 families; or

(c) public buildings belonging to the state or to any college or university;

(40) tramway lines;

(41) logging railways;

(42) temporary logging roads and banking grounds for the transportation of logs and timber products to public streams, lakes, mills, railroads, or highways for a time that the court or judge may determine. However, the grounds of state institutions may not be used for this purpose.

(43) underground reservoirs suitable for storage of natural gas;

(44) projects to mine and extract ores, metals, or minerals owned by the condemnor located beneath or upon the surface of property where the title to the surface vests in others. However, the use of the surface of property for strip mining or open-pit mining of coal (i.e., any mining method or process in which the strata or overburden is removed or displaced in order to extract the coal) is not a public use, and eminent domain may not be exercised for this purpose.

(45) projects to restore and reclaim lands that were strip mined or underground mined for coal and not reclaimed in accordance with Title 82, chapter 4, part 2, and to abate or control adverse effects of strip or underground mining on those lands.

**History:** En. Sec. 580, p. 189, L. 1877; re-en. Sec. 580, 1st Div. Rev. Stat. 1879; re-en. Sec. 598, 1st Div. Comp. Stat. 1887; amd. Sec. 2211, C. Civ. Proc. 1895; amd. Sec. 1, p. 135, L. 1899; amd. Sec. 1, Ch. 4, L. 1907; Sec. 7331, Rev. C. 1907; re-en. Sec. 9934, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1238; re-en. Sec. 9934, R.C.M. 1935; amd. Sec. 1, Ch. 245, L. 1953; amd. Sec. 6, Ch. 259, L. 1955; amd. Sec. 1, Ch. 216, L. 1961; amd. Sec. 1, Ch. 311, L. 1973; amd. Sec. 1, Ch. 375, L. 1974; R.C.M. 1947, 93-9902; amd. Sec. 18, Ch. 550, L. 1979; amd. Sec. 52, Ch. 125, L. 2001; amd. Sec. 4, Ch. 451, L. 2003; amd. Sec. 28, Ch. 300, L. 2005; amd. Sec. 1, Ch. 193, L. 2007; amd. Sec. 2, Ch. 512, L. 2007; amd. Sec. 38, Ch. 286, L. 2009.

#### Compiler's Comments

*2009 Amendment:* Chapter 286 in (16) near beginning after "purposes" substituted "pursuant to 7-11-1021" for "as provided in 7-35-2201". Amendment effective July 1, 2009.

#### Cross-References

City or Town Council — water supply and regulation, Title 7, ch. 13, part 44.

Acquisition of land for ferry, 7-14-2829.